

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.09.2019	Delivered on: 24.09.2019
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CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1099 of 2005

Marudayee Ammal ... Appellant/Appellant/Plaintiff

Vs.

1.Pavalakkodi
2.Kandasamy
3.Devi

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed by the learned Sub-Judge, Kallakurichi in A.S.No.111 of 2003 dated 11.02.2005, confirming the judgment and decree passed by the learned III Additional District Munsif, Kallakurichi in O.S.No.430 of 1999 dated 30.12.2002.

For Appellants : Mr.S.Ayyadurai

For Respondents: Mr. P.Valliappan for R2

R1- ex-parte

R3- Dismissed vide Court order
dated 25.01.2007

JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the Sub-Judge, Kallakurichi, in A.S.No.111 of 2003 dated 11.02.2005, confirming the judgment and decree passed by the III Additional District Munsif, Kallakurichi, in O.S.No.430 of 1999 dated 30.12.2002.

2. The appellant herein had filed a suit in O.S.No.430 of 1999 on the file of the III Additional District Munsif, Kallakurichi, for the relief of permanent injunction to restrain the defendants, their men, etc., from interfering with her peaceful possession and enjoyment of the suit properties. The learned III Additional District Munsif, Kallakurichi, by the judgment dated 30.12.2002, had partly decreed the suit and

granted decree in respect of $\frac{3}{4}$ cent of land and Tharisu land situated on the north of the aforesaid $\frac{3}{4}$ cent of land in item No.1 of the suit properties. He dismissed the suit in respect of the second item of the suit properties without costs.

3. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No. 111 of 2003 on the file of the Sub-Judge, Kallakurichi. The learned Sub-Judge, Kallakurichi, by the judgment dated 11.02.2005 had dismissed the said appeal without costs, confirming the judgment and decree passed by the trial Court. Feeling further aggrieved, the plaintiff has filed the present Second Appeal.

4. For the sake of convenience, the parties are referred to as described before the trial Court.

5. The averments made in the plaint are, in brief, as follows:-

The plaintiff is in possession and enjoyment of the suit properties. Item No.1 of the suit properties is the ancestral property of the plaintiff and she had constructed a house therein. Part of the house is in the patta land and part of the house is situated in the road Poromboke. The length of the house in the patta land is 30 feet on the north-south and width of the house is 21 feet on the east-west. The house is situated in more than one cent in the patta land. The defendants are the adjacent land owners and they had no rights or title over the suit properties. With a view to grab the suit properties, the defendants are trying to trespass into the suit properties. Hence, the plaintiff filed the suit for permanent injunction.

6. The averments made in the written statement filed by the second defendant and adopted by the third defendant are, in brief, as follows:-

The plaintiff is entitled to only $\frac{3}{4}$ cent in the first item of the suit properties. Originally, the plaintiff owned land in S.No.31/2B admeasuring 1 acre 62 cents and in S.No.32/4, admeasuring 47 cents and totally she got 2 acres 9 cents. Out of 2 acres 9 cents, she sold 2 acres 8 $\frac{1}{4}$ cents to the second defendant under a registered sale deed dated 14.03.1989 and hence, she retained only $\frac{3}{4}$ cent. The measurements given for item No.1 are not correct. The plaintiff is in possession and enjoyment of the aforesaid $\frac{3}{4}$ cent in patta land and the poromboke land which is situated on the north of the said patta

land. The said portion has been shown as 'ABCD' in the plan attached to the written statement. The poromboke land which is situated on the east of 'CE' portion is in possession and enjoyment of the second defendant. The defendants are paying Swajima also. Hence, the plaintiff is not entitled for the relief of permanent injunction in respect of the second item of the suit properties. The plaintiff is entitled for only $\frac{3}{4}$ cent of land in the first item of the suit properties and therefore, the defendants 2 and 3 prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the learned III Additional District Munsif, Kallakurichi, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and also examined one more witness as PW2. She had marked Exs.A1 to Ex.A3 as exhibits. On the side of the second defendants 1 and 2, the second defendant was examined as DW1 and also examined one more witness as DW2. They had marked Ex.B1 to Ex.B3 as exhibits.

8. The learned III Additional District Munsif, Kallakurichi, after considering the materials placed before him, found that the plaintiff had sold 2 acres 8 $\frac{1}{4}$ cents out of 2 acres 9 cents and hence, she retained only $\frac{3}{4}$ cent and in the said portion, she had constructed a house and she is in possession and enjoyment of the said $\frac{3}{4}$ cent along with the poromboke land which is situated on the north of the said patta land. He further found that the plaintiff while selling patta lands to the defendants, she has not retained the poromboke land which is situated adjacent to the east-west main road (Item No.2 of the suit properties) and as such, she is not in possession and enjoyment of the second item of the suit properties. Accordingly, he decreed the suit in respect of $\frac{3}{4}$ cent of patta land and the poromboke land situated on the north in Item No.1 of the suit properties. He dismissed the suit in respect of the second item. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.111 of 2003 on the file of the Sub-Judge, Kallakurichi. The learned Sub-Judge, Kallakurichi, had dismissed the said appeal and thereby, confirmed the judgment and decree passed by the trial Court. Feeling further aggrieved, the plaintiff has filed the present Second Appeal.

9. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

"1. Whether the Courts below can interpret and rely on the description of boundaries of the

properties in the schedule to the sale deed to decide the title of the parties to the suit?

2. Whether the description of the boundaries of the properties in the schedule to the sale deed can convey to the purchaser more than what is conveyed in the sale deed?

3. Are the Courts below correct in dismissing the suit with regard to second item of the suit property merely on the basis of the schedule of the properties in the sale deed (Ex.A1)" ?

10. Heard, Mr. S.Ayyadurai, the learned counsel for the appellant and Mr. P.Valliappan, the learned counsel for the second respondent.

11. Substantial Questions of law 1 to 3 :

The learned counsel for the appellant/plaintiff has submitted that the Courts below failed to consider the evidence adduced by the plaintiff in a proper perspective. He further submitted that the Courts below failed to consider Exs.A9 to Ex.A20 would prove the possession of the second item of the suit properties by the plaintiff. He further submitted that the Courts below wrongly interpreted the recitals made in Ex.A1 sale deed and came to the conclusion that the plaintiff had not retained the poromboke land while selling the patta land.

12. He further submitted that the Courts below misconstrued the intention of the parties while interpreting the sale deed. He further submitted that the Courts below failed to consider that PW1 has categorically stated in her evidence that she had allotted 10 feet land for the defendants for having access from the main road to their patta land and the said fact has not been disputed by the defendants. He further submitted that the plaintiff is an illiterate poor lady and the defendants have exploited her illiteracy and obtained the sale deed cleverly and therefore, he prayed to set aside the judgments and decrees passed by the trial Court in respect of the second item of the suit properties and decree the suit in toto.

13. Per contra, the learned counsel for the second respondent/second defendant has submitted that the plaintiff, while selling her patta land measuring 2 acres and 8 ¼ cents of agricultural land, had not retained the poromboke land which is situated between the aforesaid patta land and main road. He further submitted that the said poromboke land forms part of the road and as such the defendants are having access to reach the

main road from all points of their land and as such, the plaintiff cannot claim any right over the aforesaid piece of land which is situated between the main road and the defendants' land. He further submitted that PW1 herself has admitted in her cross examination that she has not produced any document to show that she is in possession of the second item of the suit properties.

14. He further submitted that PW1 also admitted in her cross examination that there is any poromboke land in front of the patta land, the owners of the patta land alone will enjoy the said poromboke land also. He further submitted that the plaintiff has not provided any pathway to the defendants through the aforesaid poromboke land as alleged by in her evidence. He further submitted that the trial Court taking into consideration of the aforesaid facts has rightly dismissed the suit in respect of the second item of the suit properties and the same has been confirmed by the first Appellate Court and in the said concurrent factual findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeal.

15. It is an admitted fact that the second item of the suit properties is a road poromboke which is situated in between the main road and the defendants land. It is also an admitted fact that originally the defendants' properties belonged to the plaintiff and she sold the said properties to the defendants under the original of Ex.A1 sale deed dated 14.03.1989. A perusal of Ex.A1 would show that while selling the patta lands to the defendants, the plaintiff has not retained the poromboke land which is situated in between the main road and the defendants land (second item of the suit properties). Further, though the plaintiff has stated in her evidence that she has provided 10 feet road through the second item of the suit properties for using the same by the defendants to reach the main road, she has not pleaded the said fact in her plaint.

16. Further, in Ex.A1 sale deed also it is not stated that she has provided 10 feet road to the defendants in the second item of the suit properties. Further, she has not taken any steps to appoint an Advocate Commissioner to note down the physical features of the suit properties. If an Advocate Commissioner was appointed and received his report that would show whether actually any road has been provided in the second item of the suit properties as alleged by the plaintiff, but she has not made any attempt to appoint an Advocate Commissioner and get his report.

17. Since the second item of the suit properties is a poromboke road which is situated between the main road and the defendants' land, the defendants are entitled to have access to the main road through the road poromboke (item No.2 of the suit properties).

18. The law on this point has been declared by this Court in Subbammal Vs. Venkatachalam and another, CDJ 2011 MHC 215 (SA.No.996 of 1998 on the file of this Court dated 24.01.2011 wherein, this Court has observed in para No.13 as follows:-

"13. Therefore, from the above judgments, it is made clear that a person owning property adjoining the highway, is entitled to have access from all points to reach the highway and his access cannot be prevented by putting up any construction in any portion and it is not an answer that the plaintiff has got access from other points to reach the highway."

19. From the aforesaid decision, it is clear that a person owning property adjoining the highway, is entitled to have access from all points to reach the highway and his access cannot be prevented by others. So on this ground also the suit in respect of the second item of the suit properties is not maintainable.

20. The trial Court after taking into consideration of all the aforesaid facts, had rightly dismissed the suit in respect of the second item of the suit properties and the same has been confirmed by the first Appellate Court and in the said concurrent factual findings, this Court cannot interfere. Accordingly, the substantial questions of law are answered against the appellant/plaintiff.

21. In the result, the Second Appeal is dismissed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

dna

To

1.The Sub-Judge, Kallakurichi

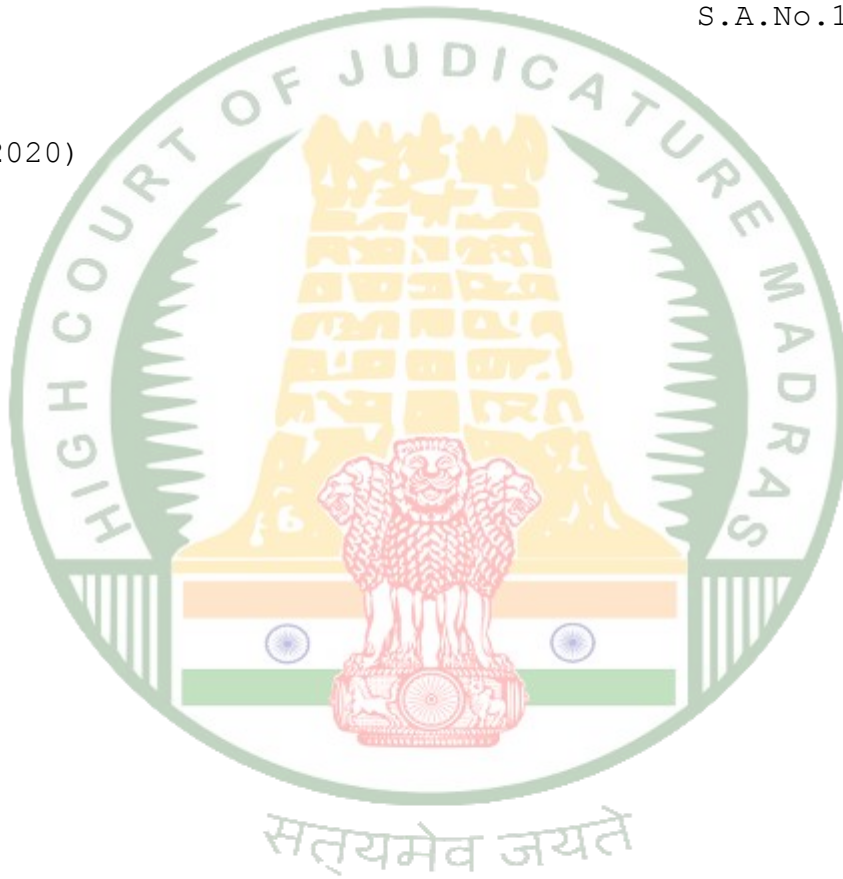
2.The III Additional District Munsif Court,
Kallakurichi.

+1 CC to Mr.P. Valliappan, Advocate sr 1851.

+1 CC to Mr.S.Ayyadurai, Advocate sr 82069.

S.A.No.1099 of 2005

GP (CO)
SP (16/09/2020)



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